

PART IV

Janu to April

Section 1-C—(ii)

**RULES AND NOTIFICATIONS ISSUED BY THE STATE
GOVERNMENT UNDER THE CENTRAL ACTS.**

GOVERNMENT OF MYSORE.

(LABOUR DEPARTMENT).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Asoka Talkies, Frazer Town, Bangalore.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

Letter No. 884/62-63, dated the 1st December 1962, from Sri R. Krishna Setty, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 1st day of December 1962.

Present.

Shri R. Krishna Setty, B.A., LL.B.

... Presiding Officer,
Labour Court, Bangalore.

Reference No. 48 of 1962.

(In the matter of an Industrial Dispute between the workmen and the Management of Asoka Talkies, Frazer Town, Bangalore).

Between

The Workmen represented by the Secretary, Mysore State Cinema
Employees' Association, Subedar Chatram Road, Bangalore ... *I Party.*

And

The Management of Messrs. Asoka Talkies, Frazer Town, Bangalore ... *II Party.*
[Reference : Government Order No. PLM 463 LLD 62, dated 31st October 1962.]

AWARD.

1. This is an industrial dispute between the workmen and the management of Asoka Talkies, Bangalore. The dispute was raised by the Secretary, Mysore State Cinema Employees' Association, Bangalore. In exercise of the

powers conferred upon them u/s, 10 (1) (c) of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Government of Mysore by their Order No. PLM 463 LLD 62, dated 31st October 1962, referred the aforesaid dispute to this Court for adjudication, the point of dispute being :—

“Whether the Management of Asoka Talkies, Frazer Town, Bangalore-5, is justified in terminating the Services of Shri S. T. Dattatreya Rao, Operator, with effect from 16th July 1962. If not, is he entitled for reinstatement with benefits of backwages and continuity of service or to any other relief ?

2. The case for the second party management, as could be seen from the counter statement, is this :—

The workman Sri S. T. Dattatreya Rao was an operator in the second party talkies during the last four years. It is alleged that during said the period he was not discharging his duties properly and on account of his carelessness the management had suffered financial loss and the several oral warnings given by the management to him were of no avail. It is also said that on 15th July 1962 he was found intentionally mishandling the projector when the show was on. The manager found that his continued presence in the theatre was harmful to the business and therefore terminated his services.

3. The case for the first party is that the allegations made in the counter statement were false and concocted, that the workman was not guilty of any misconduct that he was an experienced operator having put in a service of about 14 years, that he was not warned at any time either orally or in writing, that no charge was framed against him, that no enquiry was held and that the termination was *malafide* and an act of pure and simple victimisation.

4. The short question that arises for consideration is whether the second party management was justified in terminating the services of the workman Sri S. T. Dattatreya Rao with effect from 16-7-1962.

5. Sri Gangappa the manager of the second party talkies in his evidence accused the workman Dattatreya Rao with drinking and sleeping in the cabin, quarrelling with his assistants and mishandling the machinery resulting in serious loss, and stated that his oral warnings to him had no effect and therefore he terminated his services as per the letter dated 16-7-1962 Ex.M.1. In his cross-examination, he frankly and in a straight forward manner admitted that he did not frame any charges against the workman, that he did not ask for his explanation for his lapses, that he did not hold any domestic enquiry before terminating his services and that he did not receive any complaints against the workman at any time. Assuming for the sake of arguments that the accusations made against the workman are all well-founded, in the face of the admissions made by the manager that he did not hold any domestic enquiry before terminating the services of the workman, the question for consideration is whether the termination order could be justified. For a long time there was no uniformity in the decisions

3

of the tribunals regarding the scope of the enquiry by an adjudicator in a dispute for reinstatement of a discharged or dismissed workman. The full Bench of the Labour Appellate Tribunal in Buckingham and Carnatic Mills' case reported in 1951 II LLJ 314 discussed the various decisions of the several tribunals and ultimately held that the decision of the management to dismiss, discharge or terminate the services of a workman would not prevail in the following circumstances:—

- (i) if there is want of *bona fides*, or
- (ii) if it is a case of victimisation or unfair labour practice or violation of principles of natural justice, or
- (iii) if there is a basic error on facts, or
- (iv) if there has been a perverse findings on the materials.

The Supreme Court substantially approved of this decision and observed in Indian Iron & Steel Co. Ltd., and another *vs* Their workman reported in 1958 II LLJ 260 as follows:—

“In cases of dismissal on misconduct the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere:—

- (i) when there is a want of good faith,
- (ii) when there is victimisation or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials, the finding is completely baseless or perverse.”

It therefore follows that if the order of dismissal terminating the services of the workmen Sri D. R. Dattatreya Rao made by the management does not stand any of the tests laid down by the Supreme Court, the interference of this court would be called for. The general rules of natural justice applicable to administrative or domestic tribunals are, broadly speaking, the following:—

- (1) No man can be a judge in his own cause,
- (2) No man shall be condemned unheard, and
- (3) the reasons for the decision should be made known to the concerned person.

In the case of an employer the first rule that no man should be a judge in his own cause cannot be applicable. But at the same time it cannot be said that only the other two rules apply in the case of an employer acting as a judge. However, various decisions of the Appellate Tribunals and of the courts have set aside orders of dismissal or discharge on the grounds of violation of principles of natural justice. In *Union of India Vs. T. R. Verma* reported in 1958 II LLJ 259, the Supreme Court observed as follows:—

“Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party

4

should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act, for taking evidence was not strictly followed."

Yet another principle is that justice should not only be done but should manifestly and undoubtedly seem to be done. In *Visakhapatna Co-operative Motor Transport Vs. Bangar Raju and others* reported in 1954, *Andhra Law Times* 179, it is laid down as follows :—

"Closely allied to this principle is the other statutory principles that it is of fundamental importance that justice should not only be done but manifestly and undoubtedly seem to be done."

It is further said :

"the law never acts by stealth ; it condemns no one unheard, so that a personal judgment render against, a party without notice or an appearance by him, is vitiated by the same infirmity as a judgment without jurisdiction (*vide Chatterjee Vs Durga Dutt*—23 Cal. L. J. 436)."

If no charge-sheet or an opportunity to explain is given or no enquiry is held at all and a workmen is dismissed for misconduct, it is clear that the principles of natural justice have been violated as he has been condemned without being heard. Bearing these principles in mind, if the evidence on record is examined, it will be found that the manager of the second party management had not conducted a domestic enquiry before terminating the services of the workmen. When the manager has sworn that, before terminating the services of the workmen, he did not serve any charge-sheet to him, that he did not call for his explanation for his alleged acts of omission and commission, that he did not examine any witnesses in support of the accusations, it cannot be said that there has been no violation of the principles of natural justice.

6. For these reasons I am of opinion that the order passed by the management of the second party talkies terminating the services of the workmen Sri Dattatreya Rao offends the principles of natural justice, justifying the interference of this court. Accordingly I make an award setting aside the said order of dismissal and directing the management of the second party talkies to reinstate the workmen to his former post with continuity of

service and pay him his wages from the date of termination of his services till the date of his reinstatement. Costs Rs. 50.

Dictated, transcribed and corrected by me.

R. KRISHNA SETTY,
Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of—

1st party :

Nil

2nd party :

M.W. 1 Sri Gangappa.

List of documents admitted in this case on behalf of—

1st party :

Nil

2nd party :

Ex. M. 1 Order of dismissal.